



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 16, 1996

Ms. Jennifer Soldano
Deputy General Counsel for Operations
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR96-1675

Dear Ms. Soldano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 33252.

The Department of Transportation (the "department") received a request for "a copy of the claim submitted by Williams Brothers regarding the Baytown Bridge project." You claim that section 552.103 of the Government Code exempts all of the requested information from disclosure. You have submitted documents to us for review. We note that the documents you submitted do not appear to be representative of the documents requested. It is the governmental body's burden to submit the documents requested to this office for review. *See* Gov't Code § 552.303; Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). Responsive documents or representative samples of responsive documents are required because "[i]n order to determine whether information is subject to a particular exception, this office ordinarily must review the information." Open Records Decision No. 497 (1988) at 4. Without reviewing the responsive documents, or representative samples of those documents, we cannot determine whether any claimed exception applies. Therefore, we conclude that the department has not met its burden for responsive documents that were not submitted to this office for review and must release them unless the department can show that a compelling reason exists to withhold them from required public disclosure.

Additionally, a letter was sent to Williams Brothers Construction Co., Inc. ("Williams Brothers") pursuant to section 552.305 of the Government Code, requesting that Williams Brothers submit its arguments if it believed any of the exceptions under the Open Records Act applied to the requested information. We addressed Williams

Brothers' arguments in our ruling on a previous related request. We include a copy of Open Records Letter No. 96-1654 (1996) for your information.

Section 552.103(a) excepts from disclosure information:

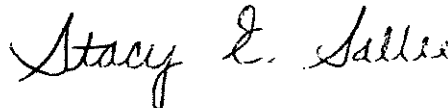
(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

Under the department's contract claims procedure, a claim for additional compensation arising out of a contract between the department and a contractor may be informally resolved by committee. 43 T.A.C. § 1.68. This committee is to "gather information, study, and meet informally with contractors" to resolve disputes. *Id.* § 1.68(b)(1). These proceedings "*are in nature an attempt to mutually resolve a contract claim without litigation* and are not admissible for any purpose" in an administrative hearing. *Id.* § 1.68(b)(6) (emphasis added). Section 552.103(a) requires "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 (1986) at 4. The contract claims procedure is not litigation for purposes of section 552.103(a). You have presented no evidence showing that this issue will proceed to litigation, nor has litigation been threatened. Therefore, we conclude that you have not shown that litigation is reasonably anticipated and may not withhold the submitted information under section 552.103(a).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 33252

Enclosures: Open Records Letter No. 96-1654 (1996)
Submitted documents

cc: Mr. George R. Neely
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(w/enclosure - Open Records Letter No. 96-1654 (1996))

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